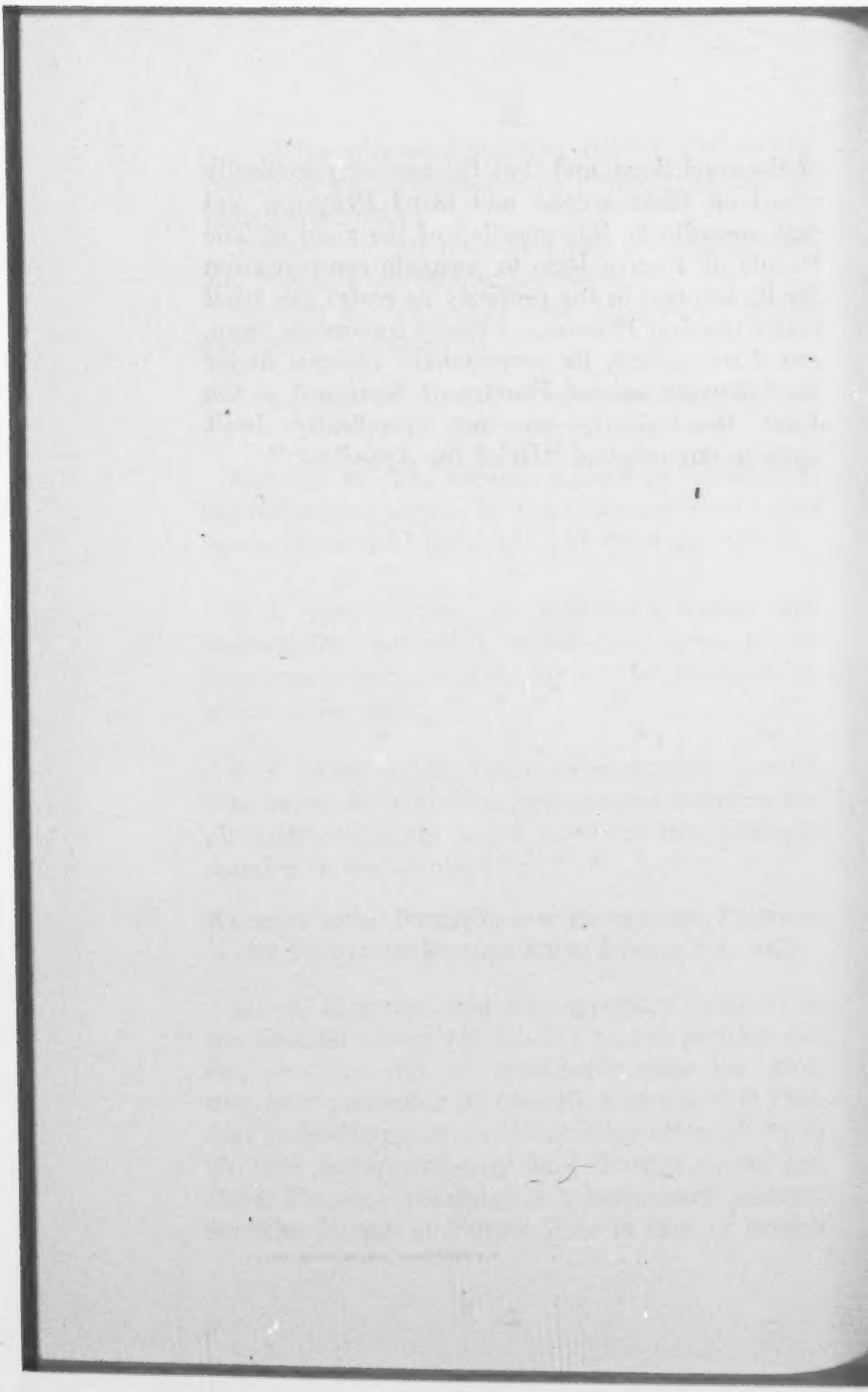

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IN THE

Supreme Court of the United States

October Term, 1942

No. 902

PEOPLE OF PUERTO RICO,

Petitioner,

vs.

UNITED STATES OF AMERICA

and

CASINO DE PUERTO RICO,

Respondents.

REPLY BRIEF FOR PETITIONER, In Reply To Brief In Opposition

First

The People of Puerto Rico had much more than "merely a possibility of reverter".

The distinction appears very plain between the ordinary "church case," such as, for example, *First Reformed Dutch Church* vs. *Crosswell*, 210 App. Div. (N. Y.) 294, 206 N. Y. Supp. 132, upon which reliance is placed in the federal government's brief (*Brief for Respondent*, pp. 7, 8, 9-10), and other cases of that category, where a grantor gives land for a church, reserving no interest or use in it for himself or his heirs, whatsoever, but only a bare "possibility of reverter" if and whenever it may cease to be used for church purposes,[1]—that is to say, where whatever theoreti-

[1] And, as in most of those cases, neither the grantor nor his heirs evinced any interest in the property when, years afterwards, the land was taken in condemnation, and did not trouble themselves to make any demand for re-entry on the land or for return of the proceeds to them.

cal interest may remain in the grantor may be said to be, at most, in the nature only of a "dry trust" giving him no possible active use of the property but only the bare "possibility of reverter" upon breach of the conditions under which the land was granted;—and, on the other hand, the instant case where The People of Puerto Rico reserved for their citizens *a presently existing active, constant use* of the property "as a social center and recreation park".

That is an active present use of the property in the nature of a presently existing undivided interest in it, wholly distinct from the interest of the Casino,—[and wholly distinct also, from the "possibility of reverter" under the second and third *Provisos* of the Act of 1936, which constituted another, separate interest (contingent interest) of The People of Puerto Rico].

Second

This presently existing active undivided interest was capable of valuation, and was therefore "compensable", like any other undivided interest in property.

A. No reason is seen why it could not be valued; and none has been suggested, either by the Circuit Court of Appeals or the District Court, or by the respondent.

B. Respondent's brief in opposition simply says (*Brief*, p. 14):

> "Obviously, it would have no market value."

And JUDGE MAGRUDER in his separate opinion, expressing his "doubt", says (R. 50):

> "I would not know how such an interest should be valued; certainly it must be something less than the value of an unencumbered fee".[2]

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[2] The majority opinion of the Circuit Court simply ignores this interest (R. 49), as is noted in our Petition for Certiorari (Petition, p. 5, 6: footnote 3, p. 5).

C. *But why can it not be valued like any other existing undivided interest in real estate?* Why is it not simply a question of expert opinion evidence of real estate men or appraisers familiar with the property and the surroundings, and with the uses to which it was being put, respectively, by the Casino [under what really amounted to a *license* to them to use the property solely for "non-profit" purposes under the Act of 1936], on the one hand, and the uses to which the citizens were putting it "as a social center and recreation park" under the right reserved for their benefit by The People of Puerto Rico, on the other hand?

D. The property as a whole was surely capable of valuation. The Casino has stipulated that its own interest in it was worth only $125,000 (*Stipulation,* R. 18). The conclusion may well follow that the evidence which the court may receive may indicate that the cash value of The People's interest, for the benefit of its citizens, in the rights reserved for their use, was the difference between the Casino's estimate of $125,000, for its own interest in the property, and the total valuation of the property for all purposes, whatever the total valuation may be shown to be.

E. At any rate, the value of The People's interest in this active use for the benefit of their citizens, should be capable of valuation. This seems to us to be plain.

Third

Reverter. Conflict of Decisions

A. Respondent's Brief in Opposition says (*"Conclusion,"* p. 14) that the decision of the Circuit Court of Appeals "presents no conflict".

B. This simply ignores (a) the plain conflict in the authorities pointed out in the decision of the Circuit Court of Appeals itself (R. 49-50) between the cases upon which it relies and the decision of the Pennsylvania Supreme

Court upon which we rely, and which the Circuit Court expressly refuses to follow.[3]

Fourth

Summing Up

A. The plain commonsense practical view, best serving the ends of justice between the parties, is that of the Pennsylvania Supreme Court in the *Lancaster School District case.*

Wholly aside from any question of reverter, The People of Puerto Rico's actively presently existing interest in the property for the benefit of their citizens as a "social center and recreation park" was capable of valuation like any other undivided interest in real estate. Therefore, when it is taken in condemnation, "just compensation" should be made to The People of Puerto Rico for its loss.

C. As was pointed out in the *2,086 acres case,*[4] the rule denying reverter is ordinarily considered applicable,—and justly so,—primarily only in those cases where, as in so many of the "church cases", neither the original grantor

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[3] *Lancaster School District* v. *Lancaster,* 295 Pa. 112, 144 Atl. 901, 902-903, 903-904. (Quoted, pp. 22-24, of our Brief in Support of Petition for Certiorari).

[The Circuit Court of Appeals, in citing the *Lancaster School District case* refers (R. 50) to a note concerning it appearing in 29 Columbia Law Review 674, commenting that it appears to be in conflict with decisions in other jurisdictions. On the other side of the picture notation should be made of the comment made in 25 Columbia Law Review 101, on decisions on the other side (some of those upon which the Circuit Court of Appeals relies here), indicating the editor's queries concerning them].

[4] *United States* v. *2,086 Acres of Land,* 46 Fed. Supp. 411, quoted on pages 24-25 of our Brief in Support of Petition for Certiorari.

nor his heirs is insisting on it or demanding reversion of the property. Those situations are wholly different from the present case where The People of Puerto Rico—instead of having at the most a perfectly "dry" or barren theoretical interest in the reversion of the property, and nothing else, and then not even insisting on that, when condemnation proceedings are begun—here, to the exact contrary: (a) Had an active use, constituting a present possessory interest in the property for the benefit of its citizens; and (b) Has promptly claimed the reverter when the condemnation proceedings deprived it of that use which by the Act of 1936 the Legislature had carefully sought to preserve in perpetuity for its citizens.

Conclusion

Under such circumstances, the fortuitous event of condemnation by the federal government ought not to work a complete deprivation of the People of Puerto Rico of their property. Either (a) the value of the property should be ascertained and paid to The People of Puerto Rico in substitution of the land taken which reverted to The People under the second and third *Provisos* of the Act of 1936, or else (b) in any event the presently existing active interest of the citizens in the property as a "social center and recreation park" which has been taken from them should be valued as a part of the valuation of the entire property, and the value of that interest as it may be found by the District Court, should be paid to The People of Puerto Rico for their benefit [and to enable the insular government, so far as the money may extend, to provide similar facilities for its citizens].

It is respectfully submitted that the prayer of the petition should be granted; the writ of certiorari issued; and, upon argument, the judgment below be reversed and the case

remanded to the District Court for further proceedings in accordance with the prayer of the petition and the supporting brief.

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